

Testimony of Melvin Butch Hollowell
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Redistricting Committee
Michigan House of Representatives
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Good morning Mr. Chairman. I would like to take this opportunity to thank you and the Members of the House Redistricting Committee for inviting me to provide testimony to this body on the application of the Voting Rights Act of 1965 on the state's legislative redistricting process.

I am appearing today in my capacity as Counsel to the Michigan Legislative Black Caucus, which represents twenty two (22) Members of the Michigan State Legislature. And I would like to acknowledge Caucus Chair Fred Durhal, as well as Representatives David Nathan and Woodrow Stanley, Members of this Committee, who also serve as Co-Chairs of the Caucus' redistricting efforts, and my Co-counsel Alan Canady, who you will also hear from.

As an overview, the newly-released census figures show that America is a more diverse nation. And likewise, Michigan – though smaller – is a more diverse state. While Michigan's overall population declined over the past 10 years (the only state to lose population) its minority population percentage increased significantly during this period, from 21.4% in 2000, to 23.4% in 2010. The position of the Michigan Legislative Black Caucus is that these significant gains should be reflected in the maps that are drawn in this redistricting process.

These gains in diversity look different than they did in the past. More people of color now live in the suburbs. No longer is there just a concentration in our city centers. Voters of color moved across the street and across the state.

For example, between 2000 and 2010 there was a 389% increase in the number of African Americans living in Warren, a 496% increase in Eastpointe, and a 260% increase in Melvindale. Western Michigan saw similar gains. In Grand Rapids the Hispanic population increased by 13.3%. In Wyoming the Hispanic population increased 109% and the African-American population increased by 48.4%. The same is true in Kentwood, which saw a 135% increase in its Hispanic population, and an 80% increase in the number of African-American residents.

All of this has implications under the Voting Rights Act of 1965. First I will give an overview of the Voting Rights Act, and then I will address the 9 questions sent to me yesterday by the Redistricting Committee. The 1965 Voting Rights Act was passed by Congress and signed into law by President Lyndon Johnson just weeks after the attacks on men women and children, as they crossed Selma, Alabama's Edmund Pettis Bridge, in March of 1965, to peacefully protest laws aimed at

disenfranchising African American voters. This law, a cornerstone of the American civil rights movement, is credited with giving millions access to the ballot and full participation in the democratic process.

In 2006 the Act was re-authorized for 25 years (until 2031) by Congress and signed into law by President George W. Bush. I was in attendance at the NAACP National Convention in Washington, DC that day, when President Bush made the announcement to us that he would be signing the legislation.

Section 2 of the Act is at the core of protecting minority voting rights in the redistricting process. In essence Section 2 provides that minority voting strength is not to be diluted in the drawing of district boundaries in the redistricting process. Based on the totality of circumstances, if it can be shown that district lines were drawn to limit the chances of minorities to elect candidates of their choosing, that would constitute a violation of Section 2. Amendments to Section 2 of the Act, adopted in 1982, provide that district lines that are drawn with either a racially discriminatory intent or effect will be struck down by the courts. (42 USC Section 1973(a)(2000 ed.).

As a general rule, minority vote dilution occurs when African-Americans are put in a district where the majority votes as a bloc to cancel out or minimize the effectiveness of minority voters.

Section 5 of the Voting Rights Act is known as the "Pre-clearance provision." This means that any major change to laws affecting voting rights – such as redistricting maps - in certain states with a history of discrimination, called "Covered Jurisdictions," must first submit those proposed changes to the U.S. Attorney General for his approval. Michigan has two (2) such Covered Jurisdictions: Clyde Township in Allegan County and Buena Vista Township in Saginaw County.

The process is initiated by the Michigan Attorney General who has a duty to submit a letter notifying the Department of Justice of the proposed change and requesting approval of same. The Department of Justice then conducts a review process which examines the proposed changes and allows for public comment and input, before making a determination of whether the proposed changes are consistent with the Voting Rights Act.

In this process the burden is on the Covered Jurisdiction to show that the new law does not have a “retrogressive” or discriminatory effect on minority voting rights. The U.S. Attorney General has 60 days to respond to the request. If it is denied, the proposed changes are barred from taking effect. The other option available to the Covered Jurisdiction is to request a judicial review of the proposed changes from a special panel of the United States District Court for the District of Columbia.

At this point I will address the nine questions submitted by this Committee.

1. We understand that you have been retained by the Legislative Black Caucus. Do you represent anyone else besides the Black Caucus in redistricting matters?

Answer: No. I serve as legal counsel to the Michigan Legislative Black Caucus exclusively in redistricting matters.

2. Is there a legal requirement that the Legislature create majority African-American districts?

Section 2 of the Voting Rights Act includes a requirement that African-American voting strength not be diluted in the drawing of district lines to ensure that minority voters have the opportunity to elect a candidate of their choice. Furthermore, when there has been an increase in the minority population, as we have seen here in Michigan, the courts have consistently invalidated map boundaries which are drawn to “pack” too many voters of color into one district, and they have invalidated map boundaries that are drawn to unfairly divide voters of color into separate districts, called “cracking.”

3. Is the Legislature required to create as many majority African-American districts as possible?

While race cannot be the pre-dominant factor in drawing district boundaries, it must be an important factor in drawing district boundaries.

Plans must fairly reflect voting populations so that voters can have the candidates of their choosing. (See, *Johnson v. Miller*).

Other non-racial factors can be included in the term “Communities of Interest,” where the following should be considered: (A) socio-economic levels, (B) faith-based institutions, (C) community-based organizations, block clubs, and neighborhood associations, (D) ethnic communities, (E) cultural interests, (F) interests in legislation, and (G) as far as the City of Detroit goes, preserving a strong voice for the largest city in the state (713,777) as a matter of public policy.

4. Is it legal to use race as a factor in drawing districts?

In *Shaw v. Reno* the Court, once again, clearly held that race can be a factor so long as it is not the predominant factor. The Legislature cannot not consider race in determining whether the drawing of district boundaries complies with the Voting Rights Act in legislative redistricting.

5. What percentage of African-Americans should a district have to give minorities a reasonable chance to elect a candidate of their choice?

While it is difficult to give a precise percentage, at least three (3) factors must be employed: (1) The percentage of African-Americans within the proposed district, (2) the percentage of African-American registered voters in the proposed district, and (3) the voter turn-out rates in the proposed district. If registration levels and historic turn-out rates are low, the percentage above fifty percent (50%) will need to be adjusted up-ward. As a practical matter, in the neighborhood of sixty percent (60%) is probably close, though the state will need to consult with statistical experts.

6. Where in the state, other than Detroit, can majority African-American districts be created?

Assuming you mean outside of Detroit and its adjacent suburbs with significant African-American populations, so-called "Opportunity Districts" can be created in Pontiac, Flint, Saginaw, and Grand Rapids.

7. State law says county, city and township boundaries should not be broken. Is [the] creation of majority African-American districts a justification for breaking political subdivision boundaries?

Yes. The creation of majority-minority districts is a justification under the Voting Rights Act where supported by population. The requirements of Federal law always trump state law requirements like contiguity (adjacency), political boundaries and compactness.

Fortunately, in Michigan there is no conflict in light of the provisions in our state's very progressive redistricting statute. MCL Sections 3.54(c) and (d) specifically requires the application of the Voting Rights Act, and the equal protection clauses of the XIV Amendments to the Federal and state constitutions. With the exception of California, which has its own Voting Rights Act, and New York which has excellent voter protections, Michigan's statute is fairly unique in the country.

8. Are there any parts of the state where Hispanic or other minority districts be created?

Yes. They can be created in Southwest Detroit, Dearborn, Flint, and Grand Rapids.

9. Is evidence of racial bloc voting necessary before majority African-American districts can be created?

No. Not at the map-drawing stage that we are in presently. Majority African American districts can be created as a reflection of the African-American population.